

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2684**

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**Introduced by Assembly Member Emmerson**

February 19, 2010

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An act to amend Section ~~5800~~ 5956.5 of the Government Code, relating to ~~local securities~~; *infrastructure financing*.

LEGISLATIVE COUNSEL'S DIGEST

AB 2684, as amended, Emmerson. ~~Local securities: sales.~~  
*Infrastructure financing: contract selection.*

*Existing law requires the governmental agency soliciting proposals and entering into agreements with private entities for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operation, or any combination thereof, by private entities for fee-producing infrastructure projects to ensure that the contractor is selected pursuant to a competitive negotiation process, which must use as the primary selection criteria, the demonstrated competence and qualifications for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operation, or any combination thereof, of the facility.*

*This bill would instead require the governmental agency to use as a primary selection criterion, the demonstrated competence and qualifications of the private entity to perform the services required under the agreement, including prior experience in performing similar services.*

~~Existing law regulates the sale of securities by local entities, including cities, counties, and public districts. Existing law defines "nonprofit~~

corporation,” in this regard, as a nonprofit corporation that proposes to aid any public body by issuing securities to finance public projects.

~~This bill would make a nonsubstantive, technical change in these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 5956.5 of the Government Code is  
2     amended to read:  
3     5956.5. Notwithstanding Chapter 10 (commencing with Section  
4     4525) of Division 5, or Part 2 (commencing with Section 10100)  
5     or Part 3 (commencing with Section 20100) of Division 2 of the  
6     Public Contract Code, the governmental agency soliciting proposals  
7     and entering into agreements with private entities for the studying,  
8     planning, design, developing, financing, construction, maintenance,  
9     rebuilding, improvement, repair, or operation, or any combination  
10    thereof, by private entities for fee-producing infrastructure projects  
11    shall ensure that the contractor is selected pursuant to a competitive  
12    negotiation process. Projects may be proposed by the private entity  
13    and selected by the governmental agency at the discretion of the  
14    governmental agency. Projects may be proposed and selected  
15    individually or as part of a related or larger project. The competitive  
16    negotiation process shall utilize, ~~as the primary selection criteria,~~  
17    ~~the demonstrated competence and qualifications for the studying,~~  
18    ~~planning, design, developing, financing, construction, maintenance,~~  
19    ~~rebuilding, improvement, repair, or operation, or any combination~~  
20    ~~thereof, of the facility~~ a primary selection criterion, the  
21    demonstrated competence and qualifications of the private entity  
22    to perform the services required under the agreement, including  
23    prior experience in performing similar services. The selection  
24    criteria shall also ensure that the facility be operated at fair and  
25    reasonable prices to the user of the infrastructure facility services.  
26    The competitive negotiation process shall not require competitive  
27    bidding. The competitive negotiation process shall specifically  
28    prohibit practices that may result in unlawful activity including,  
29    but not limited to, rebates, kickbacks, or other unlawful  
30    consideration, and shall specifically prohibit governmental agency  
31    employees from participating in the selection process when those

employees have a relationship with a person or business entity seeking a contract under this section that would subject those employees to the prohibition of Section 87100. Other than these criteria and applicable provisions related to providing security for the *any required* construction and completion of the facility, the governmental agency soliciting proposals is not subject to any other provisions of the Public Contract Code ~~or, this code, or any other statutory provision~~ that relates to public procurements.

~~SECTION 1. Section 5800 of the Government Code is amended to read:~~

~~5800. As used in this chapter, “nonprofit corporation” means any nonprofit corporation formed under the Corporations Code, or otherwise, which proposes to aid any public body by issuing securities to finance one or more public projects.~~